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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,134	08/26/2003	Ernest Ndzebet	RAYO 9236.9(RP-1596A)	3252
49376	7590	03/27/2006		
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST. LOUIS, MO 63102			EXAMINER KALAFUT, STEPHEN J	
			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/648,134	Applicant(s) NDZEBET ET AL.	
	Examiner Stephen J. Kalafut	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>18 July 2005</u> | 6) <input type="checkbox"/> Other: ____ |

Claims 1-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The percentages in the present claims do not specify their basis, i.e., whether by weight, molar amounts, etc. In claims 4, 12, 25 and 33, and those depending thereon, the coefficient "x" in the formula "Y SO_x" is not limited by any range. The formula would thus have indefinite scope. Claims 14 and 35 and those depending thereon recite a size range distribution with a mode. Since a mode is a most frequent number in a range, and not an average, the end points of the distribution cannot be determined, since the average is not determined. Claims 8, 11, 29 and 32 contain the trademark/trade names Witconate 1840X, Dyasulf 2031, Dymosol 2031, Freedom SOA-70, Freedom SOA-70WV and RM-510. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a surfactant and, accordingly, the identification/description is indefinite.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-20 and 35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldstein *et al.* (US 5,419,987) in view of Christian *et al.* (US 6,991,875).

Goldstein *et al.* disclose an anode mixture comprising zinc powder, the gelling agent carboxymethyl cellulose, and an aqueous solution of 30 weight percent KOH (column 5, lines 16-59). The mixture is pressed onto a current collector (column 5, lines 42-45). Goldstein *et al.* do not specify any particular size or range thereof for their zinc particles, but instead generally allow any size between 5 and 1000 microns (column 3, lines 35-38). Christian *et al.* disclose a zinc anode including particles having an average size of less than about 175 microns, preferably as low as 120 microns (column 5, lines 3-9), and teach guidelines for how far a range of particle sizes may be permitted for a given average (column 4, lines 10-30). Because of the relationship between particle size and surface area (column 5, lines 10-17), and because Goldstein *et al.* are also concerned with surface area (column 3, lines 36-37), it would be obvious to use the guidelines of Christian *et al.* for the zinc particles disclosed by Goldstein *et al.* No unobvious difference is seen between the present value of 28 weight percent KOH and the 30 weight percent disclosed by Goldstein *et al.* Current collectors for both electrodes, and a separator between them are conventional in the art.

Claims 1-13 and 21-34 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. The prior art, cited either herein or by applicants, does not disclose a gelled anode mixture including a metal

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alloy powder, a gelling agent, an electrolyte with less than 40 weight percent hydroxide, and an amphoteric surfactant.

Claim 22 is objected to because of the following informalities: In line 6 of this claim, the period before the semicolon should be deleted. Appropriate correction is required.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tapper (US 5,224,927) discloses an iontophoretic treatment device, where an amphoteric surfactant is used to pretreat the skin to be contacted therewith. Kawakami *et al.* (US 6,495,289) disclose a lithium anode alloyed with an amphoteric metal. Ndzebet (US 6,927,000) and Brys *et al.* (US 6,251,539) disclose zinc powder anode mixtures.

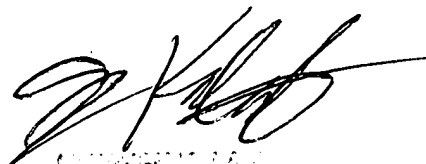
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sjk


PRIMARY EXAMINER
GROUP
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